

## **An Analysis on the Insolvency Legal Theory of Scheme of Arrangement (SOA) in the Rehabilitation of Abandoned Housing Projects in Peninsular Malaysia**

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If a company is unable to pay its debts, it may be subject to scheme of arrangement (SOA) on the application of the creditors or members or the liquidator or the company itself. The purpose of SOA is for the SOA manager to take over the affairs of the company in order to settle the debts of the creditors and once all the debts are fully paid, the control of the company will be handed back to the previous management. The SOA manager is armed with certain powers and duties in the SOA administration. The benefit of obtaining SOA is to give some time and opportunity to the SOA manager to run the company in order to settle the debts of the company. Moratorium power will be given to the company under SOA against any actions and proceedings by the creditors during the course of the SOA administration. This moratorium power is to allow an SOA manager to exercise the SOA effectively without any interference by the creditors.

In respect of the insolvent housing developer company under SOA, similar duties are carried out by the appointed SOA manager, *viz* to take over the affairs of the company, to settle off all the debts of the creditors, to carry on any housing project and business left by the company if this is expedient in accordance with the law and the wish of the creditors. Once all these have been

dispensed with, the affairs and management of the company will be handed back to the previous management.

## **The purposes of insolvency law**

In the United Kingdom (UK), there have been many debates about the purposes of insolvency law. According to one school of thought in insolvency law, one of the purposes of insolvency law is to settle all debts of the creditors (Keay & Walton, 2003). Another school emphasizes that insolvency law is to provide flexibility for the companies to be rehabilitated, which are the lifeblood of a community and the insolvent companies can affect the livelihood and well-being of those dependent on them. These dependent persons are the related parties to or the stakeholders of the insolvent companies for instance, the creditors, suppliers, employees and even the community within which the insolvent companies were then operating. There is a notion that insolvency law should not only be concerned about the interests of the creditors but should also emphasize obligations towards the public interest (Keay & Walton, 2003).

One of the undertakings that had been established to define and ascertain the purposes and principles of insolvency law was the resolutions passed by the Cork Committee. The Cork Committee provided certain purposes and emphasis on which insolvency law should operate. However, the purposes as contended by the Cork Committee are too huge that may not be practical and capable of being achieved. The purposes set were too ideal. The purposes set by the Cork Committee attempted to achieve holistic needs covering the rights and interests of the persons connected with the body corporate as well as the public who would be affected by the insolvency of the body corporate. Nonetheless, in the UK the insolvency legislations do not provide a formal statement of the purposes of insolvency law or a set of purposes. This may be due to the fact that there are still ongoing unsettled debates on the purposes of insolvency law and not only that even on whether the Cork Committee's recommendations can be satisfactorily ascertained (Finch, 2002).

It is proposed by some insolvency law experts that the purposes of insolvency law may be, among others, are:

1. to provide an equal, fair and orderly procedure in handling the affairs of insolvents, ensuring that creditors receive an equal and equitable distribution of the assets of the insolvent;
2. to provide mechanisms which allow for the treatment of the affairs of insolvents before their position is hopeless. This is the idea of rescue and particularly relevant for companies; and,
3. to attempt to diminish, as far as possible, the deleterious effects of insolvency on the interests of the public (Keay & Walton, 2003).

It is submitted that, the purposes of insolvency law in Malaysia are likewise not clearly defined. For instance in the insolvency of the abandoned housing projects' developers, the practice is that the rights and interests of the creditors are still prioritized over others' including that of the purchasers'. Looking at this scenario, the question to ask is this: can the Malaysian courts invoke equity to protect the legitimate rights and interests of other stakeholders (including the purchasers in abandoned housing projects) and marginalizing the creditors' in the insolvency proceedings? It can also be argued that if the public interest insolvency approach is preferred, which can be seen for instance when an insolvent company is directed by the court to rehabilitate the abandoned housing project, this can thus protect the interests of the purchasers and that the proceeds received from the rehabilitation transactions can also pay off the debts of the creditors. On the other hand, if creditors' centric insolvency is further examined, it will emphasize the priority of the creditors, by paying off the company's debts and can thus rescue the insolvent company's life. It follows that, as the company can breathe again, it will be able to serve its stakeholders and the consumers (the public) as well.

However the above contentions are too ideal. There are certain circumstances that the above ideas may not fully fit into the practical scenario in the insolvency administration. For instance where the available fund in the hand of the insolvent company is

inadequate to finance the rehabilitation of the abandoned housing project and to pay off the purchasers' compensation, and that the insolvent company seems is fully unable to proceed with the development or run away. In this situation, it is observed that, the insolvency law seems to have failed to protect the rights and interests of the aggrieved purchasers affected by the insolvency of the company as there are other stakeholders (such as the creditors) who are recognized under the insolvency law which entitles them to any proceeds from the insolvency administration and settles off their debts. In this situation, the creditors may normally and expeditiously take whatever they can from the residual assets and moneys that the insolvent company has, so as to settle off their debts soonest possible rather than having no opportunity to obtain any settlement from the company. Further, the stakeholders in the insolvency administration and disposal may be multifarious. The stakeholders include the creditors, the community at large, the consumers and the public. In certain situations, not all the rights and interests of the potential stakeholders can be fully fulfilled by the insolvency administration and law. Thus, there may exist some stakeholders who are aggrieved and not fully taken care of in the insolvency administration (Finch, 2002).

## **Abandoned housing projects in Peninsular Malaysia**

It is an undisputed fact that abandoned housing projects are negative phenomena plaguing the housing industry in Malaysia. The issue of abandoned housing projects began with the adoption of a housing democracy by the Malaysian government in the 1960s. Prior to the 1960s, public housing was provided by the government itself. However, due to insufficiency of government funds and the upsurges in demand for housing ownership and needs, the government opened the door for private housing developers to participate in providing public housing to the citizens. This policy was supported by aggressive government assistance, incentives and legal means to ensure its success. Despite such efforts, the



occurrences of abandoned housing projects have marred the role of private housing developers in respect of national development and safeguarding the interests of its citizen purchasers. As a result, many purchasers have become victims of abandoned housing projects.

There are various reasons causing abandoned housing projects and the consequential problems they have caused are graves. One of the reasons is that there are insufficient legal provisions and protection to avoid and prevent abandonment and to protect the interests of purchasers. In the event that rehabilitation can be carried out, the ensuing problems caused—pecuniary and non-pecuniary losses—are still left hanging and unsettled for most of the purchasers and stakeholders, without any sufficient remedies and measures to address them.

Some quarters say that the current housing policy and industry in Malaysia is still healthy, notwithstanding the plight of purchasers of abandoned housing projects, poor workmanship of the houses and other housing problems. 'The problem of abandoned housing projects only represents 1–3 per cent of the total housing projects'. 'The remaining 97–99 per cent of housing projects succeeds'. 'Thus, the current system of housing delivery and policies should be continued regardless of the plaguing occurrences of abandoned housing projects' and their negative consequences befalling the purchasers' (Dato' Abu Bakar Bin Hassan & Dato' Zainudin bin Tala, personal communication, August 13, 2010 - persons in authority in Malaysia's housing industry).

Nonetheless, despite these statements, there are still inadequate measures taken by the government to alleviate the problems of abandoned housing projects, not even can the current newly established Division of Rehabilitation of Abandoned Projects under the Department of National Housing, Ministry of Urban Wellbeing, Housing and Local Government ('MUWHLG') solve. The measures taken are still 'too little too late' in the face of the catastrophe caused by abandoned housing projects'. The fallen preys are the aggrieved purchasers themselves. The law governing the housing industry in Malaysia – the Housing Development

(Control and Licensing) Act 1966 and its regulations (Act 118) is evidently unable to fully address the problems of abandoned housing projects. The court also seems indecisive in protecting the interests of the aggrieved purchasers in abandoned housing projects. This is partly due to 'too many conflicting considerations and equities' that the court needs to deal with in cases involving abandoned housing projects. Thus in certain circumstances, the rights and interests of the purchasers may not be fully appreciated and taken into consideration by the court. The problem becomes more severe where housing developers company is subject to the insolvency administration. In the insolvency administration, the insolvent ailing company becomes bankrupt and all the assets and moneys will be used to settle off the debts of the creditors and there may not be any sufficient monetary balance which can be used to rehabilitate the abandoned housing projects and to compensate the aggrieved purchasers (Nuarrual Hilal, 2009). Among the reasons leading to the abandonment of housing projects, in Malaysia, are:

1. financial problems faced by the developers. The cause of this problem is owing to the problems with the developers' financial and construction management (severe liquidity problems and high gearing) to meet the construction costs and to repay creditors;
2. loose approval of the applications for housing developer licences by MUWHLG. MUWHLG fails to obtain the requisite advice and opinions from economists, legal experts, property experts and other experts in approving the applications;
3. challenges and problems of dealing with and clearing the project site of squatters;
4. ongoing conflicts, feuds and squabbles ensuing between and among the developers, land proprietors, purchasers, contractors, consultants and financiers causing further difficulty to coordinate and streamline the development and construction activities; and,
5. insufficient coordination between the land administration authority, planning authority, building authority, housing

authority and other technical agencies in respect of the approval for the alienation of land, land uses, subdivision of lands, planning permission, building/infrastructure plans, housing developers' licences and issuance of the Certificate of Fitness for Occupation (CF) and Certificate of Completion and Compliance (CCC), as the case may be.

The grievances and problems faced by the purchasers, if a housing development project is abandoned, are:

1. **They are unable to get vacant possession** of the units on time as promised by the vendor developers.
2. The construction of the houses is terminated or partly completed resulting in the houses being unsuitable for occupation for a long duration of time, unless the units can expeditiously be revived.
3. In the course of the abandonment of the project, purchasers still have to bear all and keep up the monthly installments of the housing loans repayable to their respective end-financiers, failing which, the purchased lots being the security for the housing loan would be sold off and with the possibility of the borrower purchasers be made bankrupts by their lender bank.
4. Further, as the purported purchased unit has been abandoned and cannot be occupied, purchasers have to rent other premises, thus adding up to their monthly expenses.
5. Inability of the purchasers to revoke the sale and purchase agreements and claim for the return of all the purchase moneys paid to the developers as the developer may have absconded or may have no monetary provisions at all to meet the claims (Nuarrual Hilal, 2006).

Currently, a housing project in Peninsular Malaysia can be deemed to have been abandoned when:

1. **a housing project which is not completed** within or beyond prescribed period of the sale and purchase agreement and

- there is not obvious activities on the site project for six (6) months consecutively; or,
2. petition to wind up the housing developer company has been filed at the High Court pursuant to section 218 of the Companies Act 1965; or,
  3. the developer company is put under the control of the Receiver and Manager; or,
  4. the developers admit in writing to the Housing Controller that they are unable to complete their projects; and,
  5. the project is endorsed as an abandoned housing project by the Minister of Housing and Local Government pursuant to section 11(1)(c) of the Housing Development (Control and Licensing) Act 1966 (Act 118)(E-Home, Portal Rasmi Jabatan Perumahan Negara, n.d).

It is trite fact that, most of the rehabilitation of abandoned housing projects were left to the discretion of the rehabilitating parties with the cooperation and assistance of the chargee lender banks, purchasers, local planning authorities, local authorities, technical agencies, the states and federal authorities, the end-financiers, the land offices and MUWHLG. The stringent laws governing housing development, land, banking, planning and building, were mostly made relaxed and flexible to accommodate the needs and to facilitate the due execution of the rehabilitation scheme. For example in *Hongkong and Shanghai Banking Corporation Ltd. v. Kemajuan Bersatu Enterprise Sdn. Bhd.* [1992] 1 LNS 26 (High Court), the court allowed the application of the creditor to appoint a provisional liquidator pending the disposal of a winding up petition for the purpose of rehabilitating the abandoned housing project carried out by the respondent company. Similarly in *Bank Bumiputra Malaysia Berhad v. Sintisis Sdn. Bhd. & 2 Ors* [1995] 1 LNS 268 (High Court of Malaya at Kuala Lumpur), the court allowed the receiver and manager to carry out rehabilitation of the abandoned housing project left by the defaulting housing developer company. In this case, the first defendant (Sintisis Sdn. Bhd., a housing developer) was the registered proprietor of the

land held under Lot 155, Mukim Grant 1995 and Lot 2758 Grant 26584, Mukim of Tebrau, Johore Bahru. The first defendant developed this land into a housing development project. To finance this project, the first defendant obtained, bridging finance facilities subject to a first legal charge on the said land and guarantees of the second and third defendants. However later, the first defendant was subject to a receivership. The business and affair of the first defendant were controlled by the appointed receiver and manager. This receiver and manager was appointed by the court and was required to undertake rehabilitation of the abandoned project left by the first defendant.

Nevertheless, there are situations where there are no required help and facility to smooth out the rehabilitation scheme, to the detriment of the purchasers desiring the project so abandoned to be revived. For example in *Mohammad bin Bae v Pembangunan Farlim Sdn. Bhd.* [1988] 3 MLJ 211, the court refused the application of the purchasers to have the abandoned housing project revived by the newly appointed receiver and manager because of the difficulty to supervise the rehabilitation process. However, the court granted damages to the purchasers. In other situations, the court allowed the application of the creditor bank to order the foreclosure of the project land charged on the default of the borrower developer in the repayment of the bridging loans, to the detriment of the purchasers' right to have the project revived. This problem also occurred in *Wong Fook Tooi & Anor v. Perwira Indra Sakti Sdn. Bhd.* [Suit No. D-28-51-2006] (High Court of Malaya at Kuala Lumpur), whereby in this case the housing developer company was wound up by the court on the application of the aggrieved purchaser. The aggrieved purchaser applied to the court to compel the developer to complete the abandoned housing project left. The court disallowed the application of the aggrieved purchaser on the ground that this will prejudice the interests of the creditors. Instead, the aggrieved purchaser is only allowed to file proof of debts (POD) to the liquidator.

Thus, there is no guarantee that when the insolvent housing developer companies abandon the housing projects, the projects

can be duly rehabilitated, and thus detrimental to the interests of the purchasers. As a result of the lack of clear provisions in the CA and the insolvency law and that there is no clear policy of the court in dealing with the insolvent housing developer companies whose housing projects are abandoned, the purchasers suffer irreparable damage, grievances and losses consequent to the default of the housing developer to complete the housing project.

## **Research questions**

There are a few questions that can be posed regarding the rehabilitation of abandoned housing projects whose housing developer companies are subject to the SOA administration. These questions are:

1. Whether the rights and interests of such purchasers, in the abandoned housing projects of the insolvent housing developer companies which are subject to SOA administration are fully protected? and,
2. If not protected, how could the law be improved and improvised for the benefits and protections of the purchasers' interests?

## **Objectives of the writing**

1. To study the rights and interests of the purchasers in abandoned housing projects whose housing developer companies are subject to SOA;
2. To study the existing SOA legal provisions under the Companies Act 1965 (CA) and the case law insofar as these provisions can deal with the problems of abandoned housing projects and its rehabilitation; and,
3. To suggest some amendments, if warranted, on the current law governing SOA administration so that the law can sufficiently be able to deal with the problems of abandoned housing projects and its rehabilitation.

## **Scheme of Arrangement in the rehabilitation of abandoned housing projects in Peninsular Malaysia**

First and foremost, it is the author's contention that the interests of the purchasers in abandoned housing projects may be protected under the provisions of Scheme of Arrangement (SOA) pursuant to section 176 of the CA. According to section 176(1) of the CA, the Court may, on application of the insolvent company or creditors or members or liquidator, as the case may be, order a meeting of compromise or arrangement of the creditors or members of the company with the company to settle their debts towards the creditors. This compromise and arrangement must first be supported by three fourths majority of the creditors or members of the insolvent company (section 176[3] of the CA).

Nonetheless in the opinion of the author, it may not be that easy to obtain the approval of the creditors or members. The applicant must prove that the proposed compromise and arrangement would be beneficial specifically to the creditors and the members of the insolvent company. Otherwise, the proposed compromise and arrangement may not actualize. In the rehabilitation of abandoned housing projects, the paramount consideration is the funds to finance the rehabilitation and the guarantee that all the authorities (such as the lender banks, local authorities, planning authorities, technical agencies and land authorities) are agreeable to support the purposed rehabilitation and the completion of the rehabilitation itself. If these matters cannot be ascertained or if going through with the rehabilitation would be detrimental to the rights of the creditors and the members, they may not approve the proposed compromise and arrangement.

In *Capital Dynasty Sdn. Bhd. (in liquidation) v. Chiang Bing & Ors* [2009] 8 MLJ 841 (High Court at Kuala Lumpur, presided by Ramly Ali J), the court allowed the application of the liquidator on behalf of the wound up company (petitioner being an abandoned project developer) to have a scheme of arrangement (SOA) conducted for the benefits of the scheme creditors (being the aggrieved purchasers, unsecured and the secured creditors),

pursuant to section 176(1), (3) and (4) of the CA. The SOA was proposed by the liquidator after a proposal was made by a company by the name of Blackstone Eight Sdn. Bhd. (Blackstone) to purchase the completed building, the uncompleted buildings, the sold units and unsold units together with the land from the wound up company and the purchasers. Blackstone's offer was subject to the agreement that a SOA should be held and approved by the court. However the respondents (the majority of whom were the purchasers whose units have not been disclaimed by the secured creditor ['unredeemed purchasers'] objected to the application for SOA. The objections were premised on the following matters:

1. that some of the purchaser respondents/interveners had fully paid or had paid up to 90 per cent of the purchase price of their respective units and the fact that some of the purchaser respondents/interveners had been provided vacant possession of their units with the issuance of the Certificate of Fitness for Occupation (CF) by the local authorities, reflects that the purchasers cannot be deemed as creditors of the petitioner and as such cannot be considered as scheme creditors under the SOA; and,
2. the purchaser respondents/interveners also took an issue on the involvement of the secured creditor being classified together as a scheme creditor and the fact that they (the secured creditor) were allowed to vote during the CCM (Court Convened Meeting).

Nonetheless the court dismissed the objection of the respondents on the ground that the majority of the creditors (including the aggrieved purchasers) would obtain benefits from the SOA as Blackstone agreed to purchase the project and the units, thus settling all the problems of the liquidators and the debts of the scheme creditors, secured creditors and the unsecured creditors. The aggrieved purchasers also could have their abandoned housing units be duly revived by Blackstone.

The above case does not spell out that the housing development project was subject to Act 118 and fell under the



jurisdiction of the Ministry of Urban Wellbeing, Housing and Local Government (MUWHLG). In the author's observation, the above case is the only reported case law that has involved housing development project whose housing developer company was subject to an SOA. Nonetheless, from the author's investigation, none of the abandoned housing development projects under the management of the MUWHLG has been subjected to the insolvency administration using SOA. It is the hope of the author that in the future there would be abandoned housing projects under the purview of the MUWHLG that will be subjected to the SOA. Then, we can know the stance and policy of the court towards protecting the rights and interests of the purchasers as well.

It should be borne in mind that the application for SOA can be made either by the company or the creditors or the members of the company (section 176[1] CA). The court may grant the application for a period of not more than ninety days (90) or such longer period as the court may for good reason allow for the SOA to be carried out (section 176[11] CA). The court may also grant a restraining order against any proceedings commenced by any other parties, on application of the company or the creditors or members, in order for the SOA be implemented smoothly (section 176[10] CA).

## **Recommendations by Corporate Law Reform Committee (CLRC)**

On 17 September 2003, Corporate Law Reform Committee (CLRC) a committee established pursuant to sections 17 and 19 of the Companies Commission of Malaysia Act 2001 by the Companies Commission of Malaysia was established. The function and purpose of the establishment of CLRC is to provide CCM with certain proposals for reform of the company law. In 2007 CLRC prepared certain report pertaining to the proposal to reform and improve the corporate insolvency rehabilitation framework. At the time being CLRC is headed by Dato' KC Vohrah. Its members consist of 25 persons from various backgrounds such as advocates

and solicitors, representatives from the Companies Commission of Malaysia (CCM), Securities Commission (SC), Bursa Malaysia Securities Berhad, Prime Minister's department, Attorney General Office (AGC), Insolvency Department, company secretaries, chartered accountants and academics. CLRC also is supported by several working groups' members and a secretariat. CLRC has conducted a research into the current provisions under the CA since December 2003 which took about four years to complete. The result is the Final Report of the CLRC ('The Review'). CLRC aims that by having completed this final report on corporate rehabilitation framework recommendations, the recommendations would be beneficial to the industry and acceptable by the government. Thus, if the recommendations are taken into account and implemented this would ensure the continuation of a business and enables the preservation of the economic value of the company as a going concern for all stakeholders in that business. In other words, the corporate insolvency framework should aim to restructure the financially ailing companies to be revived and breathed again and not otherwise. Further, CLRC hopes that the recommendations would also enable minimization of losses for creditors, including employees, and others who deal with the insolvent company and may also provide a more measured distribution of assets of a company if it does eventually fail, thus increasing return to all creditors. There is also a public interest element that justifies rehabilitation in some cases for instance the rehabilitation of abandoned housing projects (Companies Commission of Malaysia, n.d. & Companies Commission of Malaysia, 2011).

The CLRC also recommends the following additional new insolvency methods to be introduced in solving the problems of insolvent companies:

1. the appointment of a Judicial Manager;
2. the improvement of Scheme of Arrangement (SOA) under section 176 of the CA;
3. the improvement in the appointment and powers of receiver and manager; and
4. the establishment of Corporate Voluntary Arrangement (CVA).

In regard to SOA, the following recommendations are proposed by CLRC to improve the existing law and practice of the SOA (The Companies Commission of Malaysia, n.d):

1. if the 90-day period of the moratorium for a SOA between a company and its creditors is extended, it should be limited to not more than one year (recommendation 4.48 of the Review);
2. the appointment of a qualified insolvency practitioner to assess the viability of a SOA between a company and its creditors (recommendation 4.49 of the Review); and
3. the moratorium for a SOA between a company and its creditors should not be effective against the companies and securities market regulations so as to prevent them from commencing any enforcement actions to ensure compliance with corporate and/or securities law or guidelines thereunder (recommendation 4.50 of the Review).

However, according to another report prepared by CLRC, the following are the recommendations for SOA, *viz* (The Companies Commission of Malaysia, 2011):

1. The SOA should still remain but should only be used in relation to solvent companies;
2. The provision under section 176 of the CA should be reverted to its pre-amendment form i.e before the 1998 amendment with an emphasis that there must be finality on the moratorium period. The moratorium period should be limited and the current practice at allowing for an extension of the moratorium period should be ended; and,
3. The moratorium period should only be applicable to creditors and not as against regulators.

It is opined, the existence of the SOA even with the recent proposed recommendations by the Companies Law Reform Committee (CLRC) to improve the SOA may not favour the aggrieved purchasers' interests in abandoned housing projects, for example, to enable rehabilitation to be carried out. This is premised on the ground that the creditors or members of the company

may not agree to such a proposal or that many complications and problems may occur affecting the rights and interests of the creditors or the members if rehabilitation or the like is carried out in the SOA. Instances of complications and problems that usually occur in abandoned housing projects are insufficient funds on part of the insolvent developer to complete the project and inability of the rehabilitating parties to obtain the requisite approvals and consents from the authorities, banks and purchasers.

The followings are the findings of this writing as regards the application of SOA in the rehabilitation of abandoned housing projects in Peninsular Malaysia:

1. **The interests of the purchasers** in abandoned housing project may be protected with the provisions of scheme of arrangement (SOA) pursuant to section 176 of the CA. Accordingly, the Court may, on application of the insolvent company or creditors or members or liquidator, as the case may be, order a meeting of compromise or arrangement of the creditors or members of the company with the company to settle their debts towards the creditors. This compromise and arrangement must first be supported by three fourth majority of the creditors or members of the insolvent company; and
2. Nonetheless in the opinion of the author, to obtain the approval of the creditors or members may not be that easy, in the SOA. The applicant must prove that the proposed compromise and arrangement would be beneficial specifically to the creditors and the members of the insolvent company. Otherwise, the proposed compromise and arrangement may not be actualized. In the rehabilitation of abandoned housing projects, the paramount consideration is the funds to finance the rehabilitation and the guarantee that all the authorities (such as the lender banks, local authority, planning authority, technical agencies, housing authority and land authority) are agreeable to support the purported rehabilitation and the completion of the rehabilitation itself. If these matters cannot be ascertained or the rights of the creditors and the

members would be detrimental as consequence of carrying out the rehabilitation, the creditors and the members may not approve the proposed compromise and arrangement.

It is the view of the author that the insolvency approach via SOA administration as applicable in Malaysia tends to be a creditors-centric approach. The result is that if insolvent housing developer companies is subject to an SOA abandon their housing projects, the aggrieved purchasers may not get any or full protection under the said insolvency approach detrimental to their rights and interests. It is submitted that, a special regulation governing the rehabilitation of abandoned housing projects and the requirement that the applicant developer to possess housing development insurance, be introduced in the Housing Development (Control and Licensing) 1966 (Act 118) and the corresponding housing legislations in Sabah and Sarawak (East Malaysia), to protect the rights and interests of the aggrieved purchasers in abandoned housing projects, particularly when the insolvent housing developer companies enter SOA administration. The purpose of imposing this insurance is to protect the interests of the purchasers when the housing projects carried out by the insolvent housing developer companies are abandoned. This protection may serve as a 'backup' monetary means to fund the rehabilitation of the abandoned housing projects.

For the purpose of carrying out rehabilitation of abandoned housing projects expeditiously, it is proposed that, once a housing project falls under the definition of abandoned housing project, the Minister of Housing and Local Government shall order that such a project be rehabilitated pursuant to the regulations governing rehabilitation of abandoned housing projects (Nuarrual Hilal, 2006).

It is also proposed that, one of the conditions for the applicant developer to obtain a housing developer's licence is to possess a housing development insurance (or home warranty insurance). With this requirement, the purchasers' interests are protected against any abandonment and its ensuing consequences, losses

and other kinds of housing problems. The insurance could also cover any shortfall in the costs for carrying out any rehabilitation and thus ensuring the project could be duly completed and finally could protect the purchasers' rights.

In addition, certain amendments need to be made to the provisions relating to SOA and the proposed CLRC's SOA to accommodate and facilitate the duties, powers and functions of the rehabilitation manager under a specialized rehabilitation legal regime under Act 118. The following amendments to the CA relating to the SOA are proposed:

1. **Section 176(1) CA:**

*"Subject to any other written laws, where a compromise or arrangement is proposed between a company and its creditor...the Court may on the application in a summary way of the company or of any creditor.... order a meeting of the creditors..."*

2. **Section 176(3) CA:**

*"Subject to any other written laws, if a majority in number representing three-fourths in value of the creditors...agrees to any compromise or arrangement the compromise or arrangement shall if approved by the order of the Court be binding on all the creditors..."*

3. **Section 176(4) CA:**

*"The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks fit and to other written laws"*

The effect of the above proposed provision with the added word 'subject to any other written laws' and 'and to other written laws' will be this: the order of the Court relating to any agreement in the SOA of the abandoned housing developer companies shall not, at any rate, affect the powers of the rehabilitation manager to carry out rehabilitation in accordance with provisions of the proposed regulations governing rehabilitation of abandoned housing projects under Act 118.

It is submitted that if the special regulation governing rehabilitation of abandoned housing project is incorporated

into Act 118 and that the developer is armed with housing development insurance, the abandoned housing projects can be duly revived without any possibility of being subjected to any action and interference by the creditors and other stakeholders recognized under the SOA. Thus, this will protect the interests of the purchasers in that despite the fact that the insolvent housing developer company is subjected to an SOA, the abandoned housing project can still be fully revived and the purchasers may get compensations and damages.

The above proposed provision will smoothen the rehabilitation administration of abandoned housing projects. These proposed legal provisions can protect the interests of the purchasers and other stakeholders in abandoned housing projects, whose housing developer companies are subject to SOA administration, for example by allowing rehabilitation to be duly carried out and payment of compensations to the aggrieved parties.

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